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DEPARTMENT OF STATE

Washington, D.C. 20520

May 17, 1968

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TO : U - Mr. Katzenbach

THROUGH: S/S

FROM : L - Leonard C. Meeker

SUBJECT: U.S.S. Liberty death claims
ACTION MEMORANDUM

As you know, on December 29, 1967 we presented to the Government of Israel the 34 death claims arising from the attack on the U.S.S. Liberty. In accordance with established international legal practice the amount of compensation claimed on behalf of the families of the deceased was calculated on the basis of loss of support, loss of special services, and emotional anguish. The claims totalled $3,314,361. We have on several occasions explained to lawyers retained by the Israeli Embassy here the legal basis and the process of calculating these claims.

The Government of Israel has now proposed, in a note quoted in Embassy Tel Aviv telegram 3731 (Tab A) that the claims should be calculated "on the basis of the benefits and the other payments payable by the United States Government to the families of the deceased servicemen." We think this proposal entirely misconceives the legal situation. The payments provided for in United States legislation are in no way related to liability of another government under international law to pay compensation for wrongful death.

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If the Israeli approach were used to calculate the amount of compensation, the total compensation payable would be approximately $1,250,000. A large portion of the difference between this figure and the amount we have claimed would fall on the parents of unmarried decedents, for each of whom we have claimed $20,000 and who would, under the Israeli approach, be entitled to only $5,000.

In view of the foregoing, I believe we cannot accept the Israeli approach to the claims and should so inform the Government of Israel.

Two procedural and tactical questions are raised by the Israeli proposal: (1) The Government of Israel proposes to send a representative to Washington to discuss the expeditious settlement of the claims. In a conversation reported in Embassy Tel Aviv 3743 (Tab B), the Israeli Ministry for Foreign Affairs has emphasized the importance it attaches to this proposal. It is difficult to reject a proposal to discuss, but I believe we must make clear in our response that we cannot proceed on the basis of the Israeli premise. (2) The Government of Israel proposes to make an immediate payment of $1 million "in order to alleviate economic hardship of the claimants", this payment to be without prejudice to the Israeli position. Such a payment would be substantially less than we have claimed, and would relax pressure on the Israelis to make full payment. In the circumstances, I think it would be a mistake to accept any such partial payment.

The attached telegram would instruct our Embassy at Tel Aviv to make representations to the Israeli Ministry for Foreign Affairs in accordance with the position set out above. It contemplates also that we will inform the Israeli Ambassador of our adverse reaction.

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NEA agrees with this line of approach and, indeed, feels that we must indicate as strongly as possible to the Israelis that continuing delay on this issue will almost certainly lead to public airing of the issue in the near future (i.e. we will soon have to be more informative than we have been so far in response to queries and cricitisms from Congress and the public).

RECOMMENDATION:

That you approve the attached telegram to Embassy Tel Aviv. (Tab C)

Attachments:

Tab A. Tel Aviv 3731.
Tab B. Tel Aviv 3743.
Tab C. Department's telegram to Tel Aviv.

Clearances: NEA - Mr. Battle H - Mr. Torbert

L:L/C:ELKerley:ams

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